

Ryan Lee (SBN: 024846)  
Krohn & Moss, Ltd.  
10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025  
Tel: 323-988-2400 x241  
Fax: 866-583-3695  
rlee@consumerlawcenter.com  
Attorneys for Plaintiff,  
Augustine Hernandez

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| Augustine Hernandez,             | ) | <b>Case No.:</b>                |
|                                  | ) |                                 |
| Plaintiff,                       | ) |                                 |
|                                  | ) |                                 |
| v.                               | ) | <b>COMPLAINT AND DEMAND FOR</b> |
|                                  | ) | <b>JURY TRIAL</b>               |
| Midland Credit Management, Inc., | ) |                                 |
|                                  | ) |                                 |
| Defendant.                       | ) |                                 |
|                                  | ) |                                 |
|                                  | ) |                                 |

**PLAINTIFF'S COMPLAINT**

Plaintiff, Augustine Hernandez (Plaintiff), through her attorneys, Krohn & Moss, Ltd., alleges the following against Defendant, Midland Credit Management, Inc., (Defendant):

**INTRODUCTION**

- Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA).

**JURISDICTION AND VENUE**

- Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
- Defendant conducts business in the state of Arizona, and therefore, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Case Grande, Pinal County, Arizona.

4 6. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to  
5 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*.

6 7. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)*, and sought  
7 to collect a consumer debt from Plaintiff.

8 8. Defendant is a collection agency with a business office in San Diego, California.

9 9. Defendant acted through its agents, employees, officers, members, directors, heirs,  
10 successors, assigns, principals, trustees, sureties, subrogees, representatives, and  
11 insurers.

12 **FACTUAL ALLEGATIONS**

13 10. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor,  
14 Providian, with an account number ending in 8446 (Defendant's Account Number  
15 8525018446)

16 11. Plaintiff's alleged debt owed to Providian arises from transactions for personal, family,  
17 and household purposes.

18 12. On October 5, 2009, Plaintiff's counsel faxed a cease and desist and a notice of  
19 representation letter to Defendant (Plaintiff's counsel's letter to Defendant and fax  
20 confirmation are attached as Group Exhibit A).

21 13. Despite receiving Plaintiff's counsel's letter (Exhibit A), Defendant communicated with  
22 Plaintiff after October 5, 2009, in an attempt to collect a debt (Defendant's letter to  
23 Plaintiff dated May 12, 2011, is attached as Exhibit B).

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

14. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.

WHEREFORE, Plaintiff, Augustine Hernandez, respectfully requests judgment be entered against Defendant, Portfolio Recovery Associates, LLC, for the following:

15. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

16. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,  
*15 U.S.C. 1692k*

17. Any other relief that this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff, Augustine Hernandez, demands a jury trial in this cause of action.

RESPECTFULLY SUBMITTED,

DATED: July 26, 2011

KROHN & MOSS, LTD.

By: /s/ Ryan Lee

Ryan Lee  
Attorney for Plaintiff

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF ARIZONA

Plaintiff, Augustine Hernandez, states the following:

1. I am the Plaintiff in this civil proceeding.
  - a. Yo soy el Demandante en este procedimiento civil.
2. Spanish is my native language.
  - a. Español es mi idioma natal. .
3. I had someone translate to me the above-entitled civil Complaint from English to Spanish prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
  - a. Tuve alguien que me traduzcan el pleito civil que mi abogados prepararon de inglés a español y yo opino que todos los hechos contenidos es verdad, según de mi conocimiento, después de indagación razonable.
4. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
  - a. Creo que este pleito civil esta hecho bien y esta justificado por la ley o por un argumento de buena fe para la extensión, la modificación o la reversión de la ley existente.
5. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.

- 1 a. Creo que este pleito civil no es interpuesto para un impropio propósito, como  
2 molestar a cualquier Acusado, demorar esta causa a cualquier Acusado, ni crear  
3 un aumento innecesario en el costo del pleito a cualquier Acusado.
- 4 6. I have filed this Complaint in good faith and solely for the purposes set forth in it.
- 5 a. He archivado este pleito en de buena fe y para los fines expuso en ello.
- 6 7. Each and every exhibit I have provided to my attorneys which has been attached to this  
7 Complaint is a true and correct copy of the original.
- 8 a. Cada exhibición que proporcione a mis abogados que ha sido incluido a este  
9 pleito es una copia verdadera y correcta de la original.
- 10 8. Except for clearly indicated redactions made by my attorneys where appropriate, I have  
11 not altered, changed, modified or fabricated these exhibits, except that some of the  
12 attached exhibits may contain some of my own handwritten notations.
- 13 a. Menos redacciones claramente indicados hechas por mis abogados donde  
14 apropian, yo no he alterado, he cambiado, he modificado o he fabricado estas  
15 exhibiciones, sino que parte de las exhibiciones conectadas puede contener  
16 algunas de mis propias anotaciones escrito a mano.
- 17 9. Pursuant to 28 U.S.C. § 1746(2), I, Augustine Hernandez, hereby declare (or certify,  
18 verify or state) under penalty of perjury that the foregoing is true and correct.
- 19 a. Según al 28 U. S. C. § 1746(2), yo, ROSA HERNANDEZ, declaro (o certifico,  
20 verifico o indico) bajo pena de perjurio que el precedente es verdad y correcto.
- 21  
22  
23

24 July 26, 2011

25 Date

  
Augustine Hernandez

# **EXHIBIT A**

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*Debt Counsel for Seniors & the Disabled*



October 5, 2009

BY FAX ONLY: 800-561-7567

Page 1 of 3

Collections Manager  
Midland Credit Management  
P.O. Box 603  
Oaks, PA 19456

**Re: Augustine Hernandez & Francisca Hernandez**  
**Your file or reference No.: 8525018446; Providian: 5189-1310-1159-8591**  
**Our file No.: 1721**

To Whom It May Concern:

Please be advised that my law firm represents the above-referenced client(s) for the purpose of enforcing their rights pursuant to all applicable federal debt collection laws. Debt Counsel for Seniors and the Disabled exclusively represents clients who are senior citizens, disabled or both and whose only income (e.g. social security, disability, etc.) is protected by federal law. This client regrets not being able to pay however, at this time they are insolvent as their monthly expenses exceed the amount of income they receive.

This letter serves as notice that my client hereby **disputes** the above-referenced alleged debt and requests **validation** of it in accordance with **15 U.S.C. § 1692g**. Please provide any agreements our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until this validation is furnished, we do not recognize any right on your part to collection any amount from our client through credit reporting or any other means. Please be advised that the continuation of collection activity without adequately responding to the validation request, could result in a lawsuit against you pursuant to **15 U.S.C. § 1692g(b)**.

As the client's attorney, I respectfully inform you that you must **cease** contacting them pursuant to **15 U.S.C. § 1692c(a)(2) and 1692c(c)**. I have attached a signed **cease and desist** order from my client(s). If and when you violate these statutes, I will not hesitate to pursue with local co-counsel all legal remedies on behalf of my client(s).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jerome S. Lamet', is written over a horizontal line.

Jerome S. Lamet  
Supervising Attorney  
Debt Counsel for Seniors and the Disabled

Cc: Augustine Hernandez & Francisca Hernandez

---

Jerome S. Lamet, Supervising Attorney

The Pontiac Building  
542 South Dearborn  
Suite 1260  
Chicago, Illinois 60605  
V: (312) 939-2221  
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 10/05/2009 14:14  
NAME : JEROME LAMET LTD  
FAX : 13123563199  
TEL : 13129392221  
SER.# : BROD8J797996

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

10/05 14:13

00:00:00

00:00:00

OK

STANDARD

Debt Counsel for Seniors & the Disabled

**DCSD**

*William*

October 5, 2009

BY FAX ONLY: 800-561-7567

Page 1 of 3

Collections Manager  
Midland Credit Management  
P.O. Box 603  
Oaks, PA 19456

Re: **Augustine Hernandez & Francisca Hernandez**  
**Your file or reference No.: 8525018446; Providian: 5189-1310-1159-8591**  
**Our file No.: 1721**

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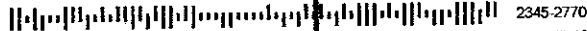
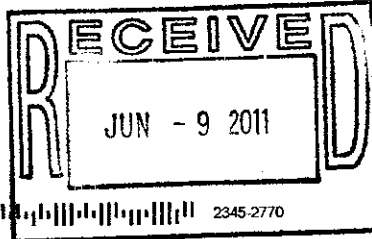
**EXHIBIT B**

Return Mail Only - No Correspondence  
**mcm** Dept. 12421  
 PO Box 603  
 Oaks, PA 19456



#1721

05-12-2011



#BWNHLTH  
 #0000 0852 5038 4463#  
 AUGUSTINE HERNANDEZ  
 57 NORTH CAMERON AVE  
 CASA GRANDE, AZ 85122-4509

002770

### Oportunidad de pago con descuento

Información de contacto: Tel (800) 282-2644  
 Horas hábiles: M-Th 6am - 7pm; Fri 6am - 5pm; Sat 6am - Noon PST  
 Propietario Actual: Midland Funding LLC  
 Acreedor Original: PROVIDIAN  
 Número de Cuenta Original: 5189131011598591  
 Número de Cuenta MCM: 8525018446  
 Saldo Actual: \$2,852.65  
 Fecha de vencimiento del pago: 06-11-2011

Estimado(a) AUGUSTINE HERNANDEZ,

Midland Credit Management, Inc., administrador de la cuenta en referencia quisiera ofrecerle la oportunidad de liquidar su cuenta con un descuento del 40%.

Si usted paga \$1,711.59 a más tardar el 06-11-2011 el saldo actual se considerará **págado\*** por completo, suspendiendo así toda actividad de cobranza!

Simplemente separe el certificado de aceptación de la oferta que se encuentra en la parte inferior de la pagina y mándelo con su pago de \$1,711.59 utilizando el sobre incluido para su conveniencia o llame gratis a (800) 282-2644

Entienda por favor que este comunicado proviene de una agencia de cobranza. Este comunicado tiene como objetivo el cobrar una deuda. Cualquier información obtenida será utilizada con ese fin.

Atentamente,

Representante de Servicio a Clientes

fax # 602-707-5513  
 Nicole

\* Su informe de crédito no será actualizado si ya se ha vencido el periodo para informar requerido por las leyes federales

**AVISO: FAVOR DE VER INFORMACIÓN IMPORTANTE AL DORSO**

#### Certificado de Aceptación de la Oferta

Número de Cuenta MCM: 8525018446  
 Saldo Actual: \$2,852.65  
 Cantidad a Pagar: \$1,711.59

Haga su cheque a nombre de: Midland Credit Management, Inc

Fecha de vencimiento de la oferta: 06-11-2011

AUGUSTINE HERNANDEZ  
 57 NORTH CAMERON AVE  
 CASA GRANDE, AZ 85122-4509

**mcm**

Midland Credit Management, Inc.  
 P O Box 60578  
 Los Angeles, CA 90060-0578



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